

SERVICE DATE – AUGUST 11, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 428X)

BNSF RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN COLFAX
COUNTY, NM

Decided: August 10, 2005

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 36.90-mile line of railroad between milepost 0.00 near French, and milepost 36.90 near York Canyon, in Colfax County, NM. Notice of the exemption was served and published in the Federal Register on June 21, 2005 (70 FR 35777-78). The exemption was scheduled to become effective on July 21, 2005, but on June 28, 2005, Hust Brothers, Inc. (HBI), timely filed a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) to purchase the line. This filing automatically stayed the effective date of the exemption for 10 days (until July 31, 2005).

On June 28, 2005, MTHB, LLC (MTHB) filed a request under the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29 for the issuance of a notice of interim trail use (NITU) for the right-of-way. MTHB also submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 CFR 1152.29, and has acknowledged that use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service.¹

On July 15, 2005, Colfax Land and Cattle Company, LLC (Colfax), a New Mexico limited liability company, and Vermejo Park, LLC (Vermejo), a Georgia limited liability company, late-filed separate formal expressions of intent to file an OFA. On July 20, 2005, Colfax and Vermejo filed separate petitions to toll the OFA filing deadline, until 15 days after BNSF provided the information prescribed in 49 CFR 1152.27(a). By decision served on July 21, 2005, Colfax's and Vermejo's late-filed notices of intent to file an OFA were accepted

¹ Because the OFA process takes priority over a request for trail use, issuance and effectiveness of the NITU will be delayed until the OFA process has been completed. See Rail Abandonments–Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986). If agreement is reached on sale of the line, a trail use condition would be unnecessary and unavailable. If no agreement is reached on the OFA, the appropriate NITU establishing a negotiating period will be issued.

and BNSF was directed to notify the Board in writing when the requested information was provided to Colfax and Vermejo so that the due date for filing OFAs and the effective date of the exemption could be determined.

By petition filed on July 29, 2005, BNSF requests the Board to hold the proceeding in abeyance for 30 days to permit the parties to continue negotiations for the possible sale of the rail corridor outside of the OFA process. BNSF states that HBI, Colfax, and Vermejo concur in and support the request to hold the proceeding in abeyance.

The request to hold the proceeding in abeyance is reasonable and will be granted. BNSF is directed to notify the Board as to the status of the negotiations within 30 days of the service date of this decision.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. BNSF's request to hold this proceeding in abeyance is granted.
2. This proceeding will be held in abeyance for 30 days from the date of service of this decision.
3. BNSF is directed to report to the Board on the status of the negotiations within 30 days of the service date of this decision.
4. The request for issuance of a NITU is held in abeyance pending completion of the OFA process. If the OFA process terminates, a decision effective on its service date will be issued to provide for interim trail use negotiations.
5. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary